



COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CONSUMER AFFAIRS AND BUSINESS REGULATION

**DEPARTMENT OF
TELECOMMUNICATIONS & ENERGY**
Cable Television Division

TRANSFER BULLETIN
June 23, 2005

Comcast Cable Communications, Inc. ("Comcast") has announced that it will acquire several cable systems serving communities in Eastern Massachusetts that are currently served by Adelphia Communications Corporation ("Adelphia"). Comcast's acquisition of these systems is the result of a broader transaction whereby Adelphia will transfer its franchises to subsidiary of Time Warner Cable Inc. ("Time Warner"). Comcast will then take control of that subsidiary, and the franchises it holds. Thus, the transaction constitutes both a legal assignment and change of control of the affected franchises. Upon the completion of the transaction, the Adelphia cable systems will be removed from the pending bankruptcy proceeding and Comcast will operate the systems. While there may be some question as to whether issuing authority approval is required in this instance, Adelphia (Transferor), Time Warner (Transferee/Transferor) and Comcast (Transferee) seek such approval at this time. To that end, on or about June 14, 2005, you received a filing that included a separate Federal Communications Commission Form 394, Application for Franchise Authority Consent to Assignment or Transfer of Control of Cable Television Franchise ("FCC Form 394" or "Transfer Application") for each part of the transaction. By this bulletin, the Massachusetts Department of Telecommunications and Energy's Cable Television Division ("Cable Division") informs communities of the transfer process and public hearing requirements.

The transfer process began when your community received the FCC Form 394s, in this case, about June 14, 2005. It is important that you note the date of receipt of the FCC Form 394s as this receipt date triggers a 120-day review period during which you must comply with certain deadlines. First, you must notify the cable operators within thirty (30) days of the receipt date if you question the accuracy of the FCC Form 394 and accompanying information. 47 C.F.R. § 76.502. Second, you must hold a public hearing during the first sixty (60) days after the receipt date. 207 C.M.R. § 4.03. Finally, a decision to accept or reject the transfer must be given within 120 days of the receipt date. 47 U.S.C. § 537; 207 C.M.R. § 4.02. Please note that if you do not take action on the application within the time frames established by federal and state law, the application is deemed approved. 47 U.S.C. § 537.

To further clarify the time frames as set forth above, federal regulations require that you notify the cable operators within thirty (30) days if you determine that the Transfer Application and accompanying information is inaccurate. 47 C.F.R. § 76.502. If you do not notify the cable operators within the thirty (30) day window, the information is deemed to be accurate and sufficient to render a decision on the transfer proposal. Id.

The FCC Form 394 provides detailed information on the proposed transfer. You must make the filed FCC Form 394s available for review by interested parties at your city or town clerk's office.

207 C.M.R. § 4.02. Within sixty (60) days of the receipt date, you must hold a public hearing in order to insure that the transferor and transferee, residents, and other interested parties are afforded full and fair opportunity to comment on the proposed transfer. State law requires that a decision on the transfer be made only after a public hearing. G.L. c. 166A, § 7; 207 C.M.R. § 4.03. As the issuing authority, you are responsible for conducting the hearing as well as providing the hearing location and notice of the hearing. 207 C.M.R. § 4.03.

To comply with state regulations, you must arrange for notice of the hearing to be published in a newspaper of general circulation in the affected city or town in each of two successive weeks, the first publication being not less than 14 days before the day of any such hearing. 207 C.M.R. § 2.02. Where a community has a cablecasting facility within the control of the cable operator, the cable operator must also provide notice to the community by cablecast at least twice a week, on separate days, during each of the two weeks prior to the hearing. Id.

Following the hearing but within 120 days of receipt, you must determine the appropriateness of the transfer and render a final decision to the cable operators. 47 U.S.C. § 537. As stated above, if you fail to render a final decision on the transfer within 120 days, the application is deemed granted. Id. In determining the appropriateness of the transfer, Massachusetts law states that “[n]o license or control thereof shall be transferred or assigned without the prior written consent of the issuing authority, which consent shall not be arbitrarily or unreasonably withheld.” G.L. c. 166A, § 7. In order to ensure that your determination is reasonable, you may only consider “the transferee’s (a) management experience, (b) technical expertise, (c) financial capability, and (d) legal ability to operate a cable system under the existing license.” 207 C.M.R. § 4.04(1); Order of Motions for Summary Decision/Consolidation, CTV 99-2, 99-3, 99-4, 99-5 (May 1, 2000). Although there are two separate FCC Form 394s pending, communities should review them as one transaction with the focus on the ultimate transferee, Comcast. In addition, you may not “propose amendments to or renegotiate the terms of the existing license or any license renewal proposal.” 207 C.M.R. § 4.04(2).

The Cable Division is available to assist communities throughout the transfer process. The Cable Division’s Municipal Liaison, Brian Merrick, will assist with any questions you may have regarding the transfer process. Please feel to contact Mr. Merrick at 617-305-3580, toll-free at 1-888-622-2588, or via email at cable.inquiry@state.ma.us.

Additional information regarding the transfer process may be found at our website at www.mass.gov/dpu/catv.

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Director